

1 David R. Ongaro (State Bar No. 154698)  
2 dongaro@ongaropc.com  
3 ONGARO PC  
4 50 California Street, Suite 3325  
5 San Francisco, CA 94111  
6 Telephone: (415) 433-3900  
7 Facsimile: (415) 433-3950

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9 Attorneys for Plaintiff  
10 IGOR A. ALATORTEV, individually,  
11 and on behalf of a class of others similarly situated  
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13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15  
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17

18 IGOR A. ALATORTEV, individually, and on  
19 behalf of a class of others similarly situated,

20 Plaintiff,

21 v.

22 JETBLUE AIRWAYS, INC., a Delaware  
23 corporation,

24 Defendant.  
25  
26  
27  
28

**Case No.**

**COMPLAINT – CLASS ACTION**

**JURY TRIAL REQUESTED**

1 Plaintiff Igor Alatortev, individually, and on behalf of all others similarly situated  
2 (“Plaintiff”), by and through his counsel, for Complaint against JetBlue Airways Inc.,  
3 (hereinafter “Defendant”) hereby states and alleges as follows:

4 **I. INTRODUCTION**

5 1. In June of 2015, Defendant, who had long touted its free baggage policy, began  
6 charging all domestic travelers a fee for the handling and transportation of passengers’ bags to  
7 their destinations.

8 2. Defendant JetBlue Airways, Inc. (“JetBlue”) was one of the last major carriers to  
9 implement these charges in the United States.

10 3. As a result, on most fares for domestic flights in the United States Defendant  
11 charged passengers a fee of \$25 for the first bag checked (or \$20 under certain conditions), \$35  
12 for the second bag, and \$100 for a third bag.

13 4. Along with Defendant’s imposition of these new baggage fees came its obligation  
14 to handle passenger baggage with care and deliver it to the passenger’s ultimate destination with  
15 the passenger.

16 5. Defendant breaches its agreements with passengers each time they damage, delay,  
17 or lose baggage and fail to refund the baggage fee to the affected passenger.

18 6. Although loss or delay of some baggage may be unavoidable, Defendant is not  
19 entitled to retain the baggage fee collected from passengers whose baggage they have lost,  
20 damaged, or delayed.

21 7. Although JetBlue promises to reimburse the fees charges for transportation of a  
22 lost bag, they instead give vouchers, which require the customer to purchase further flights with  
23 JetBlue to redeem. In addition, the vouchers have one year expiration dates.

24 8. In other words, at no time does JetBlue ever refund the consideration paid to the  
25 customer when their bag is delayed—they instead simply attempt to make more money after the  
26 failed service.

## II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction based on the Class Action Fairness Act, 28 U.S.C. § 1332 (d)(2).

10. Defendant routinely conducts business in California and with the residents of this jurisdiction.

11. Plaintiff Alatortev purchased and paid the baggage fee at Boston in Suffolk County, Massachusetts. Plaintiff learned that his baggage was lost by Defendant upon his arrival in San Francisco, California.

12. Plaintiff is a resident and citizen of Sacramento County, California.

13. Upon information and belief, Defendant is a Delaware corporation, conducting business in the State of California and nationwide.

14. The amount in controversy exceeds \$5,000,000 when the claims of the class members are aggregated.

15. According to the Department of Transportation (“DOT”), JetBlue mishandled over 3,000 bags in October 2016 alone.

16. Therefore, a refund of all fees charged to passengers during the statute of limitations would far exceed the jurisdiction requirements of CAFA.

17. Venue is proper in this action under 28 U.S.C. § 1391(c).

## III. GENERAL ALLEGATIONS

18. Defendant JetBlue is domestic airline passenger carrier based out of its corporate headquarters in Long Island City, New York.

19. Defendant is a multi-billion dollar publicly traded company, trading on the NASDAQ.

20. In 2015 Defendant JetBlue—who often touting its “no fee” policy—made news by joining the rest of the industry in an extremely lucrative billion dollar annual revenue grab originally created by American Airlines in 2008 by adding the service of baggage fee.

21. Defendant’s choice to create this new service worked, as upon the announcement of the change in policy JetBlue’s stock climbed by 2.5%.

1           22. Defendant charged their baggage fees in addition to the amount already charged for  
2 the passenger's airline ticket.

3           23. At the time the fee was implemented JetBlue was quick to claim it was not a junk  
4 fee, or "not a scheme to take a lot of stuff away and make you buy it back" as stated by Marty St.  
5 George, Executive Vice President of JetBlue.

6           24. Instead Defendant took the deliberate "self-imposed" undertaking to create a  
7 baggage fee, set the baggage fee, and require its passengers to pay the baggage fee.

8           25. At airports across the country, as well as at kiosks, and online, at Defendant's sole  
9 direction and undertaking, personnel began representing to passengers that a fee was now  
10 required for timely delivery of their checked baggage.

11           26. In fact the carrier required passengers to deliver the baggage at least 40 minutes  
12 prior to the flight (or 60 minutes on an international flight), as a condition precedence before it  
13 would agree to the service. (*See* Contract of Carriage Paragraph 20, attached as Exhibit A.)<sup>1</sup>

14           27. Thus, in a transaction separate and apart from the customer's purchase of the airline  
15 ticket, Defendant began charging passengers a checked baggage fee.

16           28. Upon acceptance of the passengers' bags along with their baggage fees, Defendant  
17 incurred the obligation to not lose or damage the baggage or delay its delivery.

18           29. Notwithstanding these representations and obligations, Defendant loses, damages,  
19 destroys, and/or delays the delivery of a large percentage of bags each day on flights within, and  
20 originating from, the United States.

21           30. On or about May 12, 2017, Plaintiff and his wife Olga Garicichina were charged a  
22 fee of \$25 for the handling and delivery of her bag from Boston, Massachusetts, to Sacramento,  
23 California. Plaintiff and his spouse were then advised that their flight would be diverted to San  
24 Francisco, California.

25           31. Upon arrival in San Francisco, California they discovered, and it was confirmed,  
26 that their bag had been lost.

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27  
28 <sup>1</sup> All references are to the carriage contract in effect during the Alatortev flight, which is  
attached hereto as Exhibit A



- (1) Whether Defendant breaches its agreements with passengers from whom they have collected a baggage fee each time they fail to timely deliver the baggage to passengers, free from damage, at the agreed-upon destination.
- (2) Whether Defendant breaches its agreements with passengers from whom they have collected a baggage fee each time they damage or destroy the baggage.
- (3) Whether Defendant is obligated to refund the baggage fee charged to class members each time they fail to timely deliver the baggage to passengers, free from damage, at the agreed-upon destination.
- (4) Whether Defendant is obligated to refund the baggage fee charged to class members each time they damage or destroy the baggage.

41. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of Plaintiff's claims.

42. Plaintiff's claims are typical of those of the class in that they were charged a baggage fee and were not refunded the fee even though their bags failed to arrive with them at their destinations.

43. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendant has acted or refused to act on grounds generally applicable to the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of class members to protect their interests.

44. Further, Defendant has failed to take action as required under common law, on grounds applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief as respect to the class as a whole necessary and appropriate.

45. Plaintiff is an adequate representative of the class because they are members of the class and their interests do not conflict with the interests of the members of the class they seek to represent. The interests of the members of the class will be fairly and adequately protected by

1 Plaintiff and his undersigned counsel, who have extensive experience prosecuting and defending  
2 complex class-action litigation.

3 46. Maintenance of this action as a class action is a fair and efficient method for the  
4 adjudication of this controversy. It would be impractical and undesirable for each member of the  
5 class who suffered harm to bring a separate action. In addition, the maintenance of separate  
6 actions would place a substantial and unnecessary burden on the courts and could result in  
7 inconsistent adjudications, while a single class action can determine, with judicial economy, the  
8 rights of all class members.

### 9 **COUNT I**

#### 10 **Breach of Contract**

11 47. Plaintiff reasserts and re-alleges the allegations set forth in the above paragraphs.

12 48. Plaintiff brings this claim for relief on behalf of himself and the members of the  
13 class.

14 49. From the start of the Class Period to the present, defendant offered to transport  
15 Plaintiff's bag and deliver the bag on time with the passenger. Jet Blue agreed to reimburse  
16 passengers for any fees associated with the transportation of a lost bag. *See* Exhibit A, 38(a)(3).

17 50. Each time Defendant charges a passenger a baggage service fee, it enters into a  
18 separate contract with the passenger to timely deliver the baggage to the passenger upon arrival at  
19 their destination and to deliver the baggage to the passenger undamaged. *See* Exhibit A, 38(a)(3).

20 51. Plaintiff and Defendant entered into a contract under which Defendant agreed to  
21 timely deliver Plaintiff's bag to him upon his arrival at his destination and otherwise handle his  
22 bag with care so as not to lose, delay or damage his bag, and Plaintiff.

23 52. Plaintiff and each member of the Class are parties to contracts, namely baggage  
24 service fee contracts, with Defendant that are uniform with respect to the provisions applicable to  
25 the claims asserted against Defendant.

26 53. Plaintiff and the members of the Class have performed all conditions, covenants,  
27 and promises required to be performed on their part in accordance with the terms and conditions  
28

1 of the baggage fee contract, except to the extent such performance was excused, released or  
2 waived by the actions, conduct or agreement of Defendant.

3 54. Defendant breached its contractual obligations under the baggage service fee  
4 contracts with Plaintiff and each member of the Class by failing to timely deliver their baggage to  
5 Plaintiff and each member of the Class upon arrival at their destinations, without damage to the  
6 baggage, and by not refunding the baggage service fee.

7 55. As a direct and proximate result of Defendant's breach of baggage service fee  
8 contract, Plaintiff and each member of the Class have been damaged in an amount according to  
9 proof at trial.

10 56. The notice of claims provision in paragraph 22(a) of the carriage contract does not  
11 apply to as that provision only applies to loss or damage suffered by the customer and not the  
12 return of the consideration (fees) for failure to deliver the bags on time. Plaintiff's interpretation  
13 of the contract is substantiated by the fact the exact language appears in JetBlue's carriage  
14 contracts that were in effect at least 8 years before they instituted their baggage fee policy and  
15 was not altered or updated when baggage fees were instituted in 2015.

16 57. In other words, the only reasonable interpretation is that Paragraph 22 references  
17 the damage caps which apply to losing one's personal possessions, or the delay of those  
18 possessions when one submits a claim under the longstanding FAA guidelines for domestic  
19 travel, *not* for the consideration tendered in the voluntary undertaking of baggage transportation  
20 initiated by the carrier in 2015.

## 21 **COUNT II**

### 22 **Unjust Enrichment/ Quasi Contract**

23 58. Plaintiff reasserts and re-alleges the allegations set forth in the above paragraphs.

24 59. Plaintiff conferred a benefit upon Defendant when they paid the baggage fees, and  
25 upon acceptance of the baggage fees Defendant had knowledge of the benefit.

26 60. Imposition of these baggage fees enriched Defendant and increased their revenue,  
27 as was their intention. Defendant's acceptance of these fees imposed upon them an obligation to  
28 deliver the baggage, along with the passenger, to the agreed-upon destination, and to refrain from



1 damaging or destroying the baggage. This obligation was self-imposed with Defendant's choice  
2 to create the baggage fee.

3 61. Defendant's retention of the baggage fees becomes unjust, however, when  
4 Defendant fails to timely deliver a customer's bag to the agreed-upon destination without  
5 damage.

6 62. By retaining the baggage fee in such instances, Defendant has been unjustly  
7 enriched under both state and federal common law.

8 63. Plaintiff was, and all others similarly situated were, thereby damaged in an  
9 amount to be determined at trial.

### 10 **COUNT III**

#### 11 **Breach of the Covenant of Good Faith and Fair Dealing**

12 64. Plaintiff reasserts and re-alleges the allegations set forth in the above paragraphs.

13 65. Implicit in every agreement is the covenant of good faith and fair dealing.

14 66. When Defendant collects a baggage fee for checked baggage, acceptance of that  
15 fee from the passenger obligates the airline to timely transport the passenger's baggage to its  
16 agreed upon destination free of damage.

17 67. In failing to refund the baggage fee to Plaintiff, and all others whose baggage they  
18 failed to timely deliver free of damage, Defendant breached the covenant of good faith and fair  
19 dealing under both state and federal common law.

20 68. Plaintiff was, and all others similarly situated were, thereby damaged in an  
21 amount to be determined at trial.

### 22 **VI. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff and all others similarly situated, demands judgment against  
24 Defendant and pray for:

25 A. Order Defendant to make Plaintiff and the other class members whole by  
26 immediately refunding all baggage fees charged for a bag that was lost, damaged, or delayed.

27 B. Order Defendant to provide full restitution to Plaintiff and other class members.  
28

1 C. Order Defendant to make Plaintiff and the other class members whole by providing  
2 compensation for past and future pecuniary losses resulting from the unlawful practices described  
3 in the above paragraphs, including out-of-pocket expenses, in amounts to be determined at trial.

4 D. Order Defendant to make Plaintiff and the other class members whole by providing  
5 compensation for past and future non-pecuniary losses resulting from the unlawful practices  
6 described in the above paragraphs, in amounts to be determined at trial.

7 E. Order Defendant to make Plaintiff and the other class members whole by providing  
8 appropriate prejudgment interest, in an amount to be determined at trial, and other affirmative  
9 relief necessary to eradicate the effects of its unlawful practices.

10 F. Award Plaintiff and the other class members the costs of this action, including  
11 attorneys' fees.

12 G. Grant any additional or further relief as provided by law, which this Court finds  
13 appropriate, equitable, or just.

14 **VII. DEMAND FOR JURY TRIAL**

15 Plaintiff hereby requests trial by jury of all issues triable by jury.

16 **VIII. DESIGNATION OF PLACE OF TRIAL**

17 Plaintiff designates San Francisco, California as the place of trial.

18  
19 DATED: August 21, 2017

**ONGARO PC**

20  
21 By: s/David Ongaro

22 David Ongaro  
23 Attorneys for Plaintiff  
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